

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BONNIE LOPEZ et al.,

Plaintiffs,

v.

THE STATE OF NEVADA ex rel. NEVADA
DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

Case No.: 2:21-cv-01161-ART-NJK

ORDER

[Docket No. 51]

Pending before the Court is Nurse Defendants' motion to extend discovery for the limited purpose of taking the deposition of Stan Smith, Ph.D. Docket No. 51. The Court has considered Nurse Defendants' motion, Plaintiffs' response, and Nurse Defendants' reply. Docket Nos. 51, 53, 57.

A request to extend unexpired deadlines in the scheduling order must be premised on a showing of good cause. Fed. R. Civ. P. 16(b)(4); Local Rule 26-3. The good cause analysis turns on whether the subject deadlines cannot reasonably be met despite the diligence of the party seeking the extension. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). This showing of diligence is measured by the movant's conduct during the entirety of the period of time already allowed. *CC.Mexicano.US, LLC v. Aero II Aviation, Inc.*, 2015 U.S. Dist. Lexis 169110, at *11-12 (D. Nev. Dec. 15, 2015). "Although the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking modification. If that party was not diligent, the inquiry should end." *Johnson*, 975 F.2d at 609 (internal citation omitted). All requests for extension must be supported by a statement specifying the discovery completed, a specific description of the discovery that remains to be completed, the reasons why the deadline was not satisfied within the time limits set by the Court, and a proposed schedule for completing all remaining discovery. Local Rule 26-3.

1 Here, Nurse Defendants submit that they noticed Dr. Smith's deposition for January 5,
2 2023, the one date in January on which he said he was available. Docket No. 51 at 4-5. On January
3 4, 2023, the day before the deposition, counsel for Nurse Defendants learned that he was required
4 to participate, as a U.S. Navy JAG Corps. Reserve officer, in a military funeral for a deceased
5 veteran. *Id.* at 5. Counsel promptly notified Plaintiffs' counsel and was advised that Dr. Smith's
6 next available date was on February 2, 2023, nearly three weeks after the expiration of the
7 discovery deadline. *Id.* Nurse Defendants now ask the Court to extend the discovery deadline for
8 the sole purpose of taking Dr. Smith's deposition on February 2, 2023, for a total of three hours,
9 as a result of counsel's unavoidable conflict, the production of a supplemental report on December
10 30, 2022, the production of Dr. Smith's job file, and the anticipation of an economics expert's
11 supplemental report. *Id.* at 5-6.

12 Plaintiffs oppose the request because, *inter alia*, the Court granted six prior requests to
13 extend discovery, Dr. Smith's report was disclosed in October 2022, his supplemental report was
14 disclosed on December 30, 2022, and no request was made to depose him until December 21,
15 2022, less than 30 days before the close of discovery. Docket No. 53 at 3. Plaintiffs further submit
16 that, though Nurse Defendants' counsel was unavailable on January 5, 2023 due to his military
17 duty, other counsel could have deposed Dr. Smith, but chose instead to vacate the deposition. *Id.*
18 at 7.

19 In reply, Nurse Defendants submit that the sheer amount of discovery conducted in this
20 case demonstrates diligence. Docket No. 57 at 2-7. Further, Nurse Defendants submit that they
21 wanted to conduct affirmative discovery prior to conducting depositions and that, since they are
22 the parties who noticed Dr. Smith's deposition and their attorney spent time preparing for the
23 deposition, it was not tenable for other counsel to step in when their counsel became unavailable.
24 *Id.* at 9. Finally, Nurse Defendants note that, since Dr. Smith is no longer available on February
25 2, 2023, they seek to depose him on February 21 or 24, 2023, which are dates that all necessary
26 parties are available.

27 The Court finds that good cause exists for the extension request and, therefore, Nurse
28 Defendants' motion to extend is **GRANTED**. Docket No. 51. The discovery deadline in this case

1 is extended until February 24, 2023, for the sole purpose of taking a three-hour deposition of Stan
2 Smith, Ph.D. on either that date or on a date prior.

3 IT IS SO ORDERED.

4 Dated: January 27, 2023.

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7 NANCY J. KOPPE
8 UNITED STATES MAGISTRATE JUDGE
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